

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION

MDL No. 1456

Civil Action No. 01-12257-PBS

THIS DOCUMENT RELATES TO:
County of Suffolk v. Abbott Labs, Inc., et al.,
 (E.D.N.Y. No. CV-03-229)

Judge Patti B. Saris

Chief Magistrate Judge Marianne B. Bowler

**SCHERING-PLOUGH'S OPPOSITION TO COUNTY OF SUFFOLK'S SECOND
MOTION TO COMPEL THE PRODUCTION OF DISCOVERY**

Schering-Plough Corporation (“Schering”) respectfully submits this Opposition to County of Suffolk’s Second Motion to Compel the Production of Discovery, which motion is a rather obvious attempt to circumvent Judge Saris’s Order that stayed discovery as to Warrick Pharmaceuticals Corporation (“Warrick”), for which reason -- among others -- it should be denied.

On October 26, 2004, Judge Saris issued a Memorandum and Order (the “Order”) in which she stated that “all discovery shall be stayed with respect to . . . Warrick Pharmaceuticals . . .” because the County of Suffolk (“Suffolk”) had theretofore failed to demonstrate a “good faith basis” for its claims against Warrick (and several others). *See* Order at 4, attached hereto as Ex. A. The stay of discovery as to Warrick prevents discovery into the merits of Suffolk’s claims against Warrick, which Judge Saris found insufficient to justify discovery unless and until Suffolk could make a showing of good faith that it has so far been unable to make.¹

¹ Suffolk has made submissions attempting to rectify its defective pleadings, which Warrick and other Defendants have opposed. Judge Saris not ruled on the sufficiency of these additional submissions, and, until she does, her order staying discovery remains in effect.

Notwithstanding Judge Saris's Order, Suffolk subsequently demanded that Schering,² the parent of Warrick, produce documents relating to Warrick that Schering had produced in *The State of Texas ex rel. Ven-A-Care of the Florida Keys, Inc. v. Warrick Pharmaceuticals, Schering-Plough Corp. et al.* (the "Texas Litigation"). Schering objected because all but at most a handful of documents produced in that case relate solely to Warrick, and the handful that might not relate solely to Warrick are interspersed among the more than 400,000 pages of documents that do. *See* Decl. of John McDonald, attached hereto as Ex. B. Finding these few needles in a gigantic haystack would be disproportionate to their value to Suffolk. Of the more than 400,000 pages of documents produced in the Texas Litigation, only a minimal number were produced that might not have related exclusively to Warrick or Warrick products. *See id.* There would be no way of knowing whether those few documents would be relevant to Suffolk's claims against Schering without Schering's wading through more than 150 boxes of documents and sifting through more than 400,000 pages to locate and review them. Such an undertaking for documents that Suffolk has no reason to believe would be helpful to its case would be unreasonable, unduly burdensome and expensive, and disproportionate to the value of the documents to Suffolk. *See* Fed. R. Civ. P. 26(g)(2)(C).

The discovery sought violates Judge Saris's order because the claims to which it is directed -- the claims against Warrick -- are not subject to discovery at this time, regardless to whom the request might nominally be made.

² Schering has made available discovery relating to Suffolk's claims against Schering, including 71 boxes of materials that were presented to, and reviewed by, Suffolk.

Wherefore, Suffolk's Second Motion should be DENIED.

THE SCHERING-PLOUGH GROUP

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/s/ John T. Montgomery

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Dated: January 25, 2005

CERTIFICATE OF SERVICE

I hereby certify that on January 25, 2005, I caused a true and correct copy of the foregoing to be served on all counsel of record by electronic service pursuant to Case Management Order No. 2 entered by the Honorable Patti B. Saris in MDL 1456

/s/ Eric P. Christofferson

Eric P. Christofferson